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11-19-07

04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement to
establish the California Institute for Climate
Solutions.

Rulemaking 07-09-008

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E) ON PROPOSED CALIFORNIA
INSTITUTE FOR CLIMATE SOLUTIONS**

CHRISTOPHER J. WARNER

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6695
Facsimile: (415) 972-5220
E-Mail: CJW5@pge.com

Dated: November 19, 2007

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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I. INTRODUCTION

Pursuant to Rulemaking 07-09-008 (OIR), Pacific Gas and Electric Company (PG&E) provides its reply comments on the University of California's proposal to establish the California Institute for Climate Solutions (Institute). PG&E's comments are organized into (1) an executive summary; and (2) comments on the revised proposal submitted by the University of California as part of its opening comments.¹

¹PG&E is not replying extensively to opening comments filed by other parties in this proceeding, because the University of California has significantly revised its original proposal and therefore PG&E's comments on the revised proposal also address many of the opening comments filed by other parties as well. On the issue of appropriate ratemaking for recovery of the Institute's costs, PG&E agrees with SDG&E/SoCal Gas (p.9) and SCE (p.7) that funding for the Institute should be allocated in the same manner as other PPP charges. While PG&E proposed to include the allocation of these costs in distribution rates for electric customers, PG&E would also find it acceptable to include these charges in electric PPP rates and the gas PPP surcharge. PG&E disagrees that CICS costs should be allocated on an equal cents basis (p.4) simply because greenhouse gas emissions are linked to energy use. Instead, PG&E believes the Commission should allocate these funds in the same manner as more similar programs such as RD&D and energy efficiency as noted in PG&E's comments. Finally, the Community Environmental Council states that an equal cents allocation should be used with exemptions for low income customers as in the case of public goods funds (Answer to question 6). PG&E notes that this proposal is flawed on several levels. First, Public Goods Funds are not allocated on an equal cent per kWh. As noted in PG&E's comments, all components of the electric PPP rates except the cost of the low income assistance program (CARE), are funded based on a percent of total revenue. Further, PG&E notes that low income customers do not receive an exemption from these costs, and urges the Commission not to establish as exemption for any group of electric customers since all customers will benefit and since this component is likely to be very small.

II. EXECUTIVE SUMMARY

PG&E applauds the University of California for significantly revising its proposal, in anticipation of the opening comments provided by PG&E and other parties. In particular, the University is to be commended for (1) including other major California academic and public research institutions in its proposal; (2) acknowledging that public utilities, as stewards for the customers who would fund the Institute, should serve as members on the Governing Board of the Institute, and should play a major role in developing and overseeing the research and funding programs and priorities of the Institute; and (3) including a funding component for science and engineering training, in recognition of the acute and growing shortage of scientists and engineers needed to actually implement and install new greenhouse gas reduction technologies.

PG&E also appreciates that the University's revised proposal provides additional details and fills several informational "gaps" that existed in the original proposal. However, PG&E also believes that the revised proposal still leaves several key gaps and issues that need to be clarified and ironed out before a \$600 million increase in public utility rates can be justified to support the otherwise laudable and innovative goals of the Institute.

In particular, PG&E recommends that the proposal be further clarified and revised as follows:

- **Technology transfer.** More detail is needed on how technology developed by the Institute will be transferred directly to utilities for the use and benefit of their customers. R&D that never gets commercialized will neither meet the State's greenhouse gas reduction goals, nor provide any benefits to utility customers. A more specific game plan on

technology transfer, including demonstration projects and deployment strategies, needs to be included in the proposal.

- **Less “policymaking,” more applied research.** The revised proposal still contains too much emphasis on “policymaking” and “information development,” instead of focused, solution-oriented research. The focus of the Institute should be on research that supports policy decisions already made by California and the nation, not on developing new policies that duplicate policymaking done elsewhere and displace needed funds for applied research.
- **Ensure direct ratepayer benefits first, leverage other funding sources next.** In the discussion of whether utility customers should be provided direct benefits from the Institute’s research, such as through patents, royalties, or free licensing, the University cites the need to leverage additional federal funding as a barrier to such direct benefits, based on federal laws requiring that the profits from federally-funded research only be used for further research or education. PG&E believes this approach gets the whole purpose of the Institute backwards: The Institute is to be funded by utility ratepayers, not by federal or state taxpayers, and therefore the interests of those ratepayers should come first in the Institute’s priorities, not the goal of chasing more federal or public funds for the sake of more funding. The Institute already will face challenges in coordinating the expenditure of ratepayer funds with other existing sources of R&D funding at the federal and state levels. The Institute’s

priority should be leveraging R&D funding for the benefit of *ratepayers*, not leveraging for the benefit of other federal programs or taxpayers. The University's proposal should be revised to ensure that utilities and ratepayers receive patent and royalty rights or other direct benefits, such as free licensing of technologies developed with Institute funds, as a priority of the Institute. The University of California's recent \$500 million contract with British Petroleum creating the Energy Biosciences Institute provides for royalty and licensing rights that should be considered for the Institute in this proceeding.

- **Shareholder funding permitted, not mandated.** The University took no position on the question of whether shareholder funding should be required as part of the Institute funding. PG&E does not believe shareholder funding can or should be mandatory. Instead, funding from other private sources, including from the utilities' shareholders, should be encouraged on a voluntary basis, in order to leverage the real-world skill sets and know-how of the private sector in support of the Institute's goals. Additionally, as PG&E recommended in its opening comments, an equitable mechanism should be included for funding from all California utility ratepayers, including those served by local publicly owned utilities and other California load serving entities, in order to ensure that those who are directly benefited from the Institute's programs are bearing their fair share of the costs.

- **The scope of the Institute’s research program should be limited to greenhouse gas reducing and adaptive R&D and technology transfer in the electricity and natural gas utility sector, and not broadened beyond that through the “Sustainable Energy Roadmap.”** PG&E agrees that the open and collaborative process envisioned by the “Sustainable Energy Roadmap” in the revised proposal is a good process. However, as currently described, that process is far too open-ended and unfocused to rely on as a means of setting the Institute’s priorities. As PG&E stated in its opening comments, the Institute’s priorities should be on research, development and technology transfer in the electric and natural gas utility sectors that supports and accelerates the transition of that sector to zero- or low-carbon sources of energy and energy efficiency for the generation, transmission, delivery and retail consumption of electricity and natural gas. Broader research priorities in other energy and greenhouse gas emitting sectors, such as transportation,² are an important priority for climate change R&D in general, but should not be a priority for the Institute, given that its primary funding source is through the electric and gas bills paid by investor-owned utility customers.

• **Public workshops and meetings may be the most administratively efficient way for the University of California and stakeholders to**

² AB 118 (California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007), was recently signed by the Governor, authorizing approximately \$125 million per year “to develop and deploy innovative technologies that transform California’s fuel and vehicle types to help attain the state’s climate change policies.” The Institute’s Roadmap should identify ways in which it can coordinate with these efforts in the electric and gas utility sectors.

obtain further details and resolve any remaining issues regarding the Institute proposal. As in all great ideas, the “perfect should not be the enemy of the good.” Thus, PG&E believes many of the details of the revised Institute proposal could most efficiently be discussed and fleshed out in some public workshops involving the University, other academic institutions, and other stakeholders. PG&E encourages the Commission and the University to jointly hold such workshops for the benefit of all parties, and PG&E pledges to actively participate in support of moving the Institute proposal forward.

III. COMMENTS ON REVISED UNIVERSITY OF CALIFORNIA PROPOSAL

A. Governance: PG&E Supports Formal Representation and Participation by Utilities on the Institute Governing Board and Stakeholder Committees

PG&E appreciates and agrees with the University’s proposal that utilities be members of the Governing Board of the Institute, as well as participate on the stakeholder committees advising the Governing Board on the research program and priorities of the Institute. The utilities, along with the CPUC, are the most knowledgeable and most direct stewards of the funds to be contributed to the Institute by utility customers. In addition, the utilities are the “counter-parties” to the Institute who are most likely to be able to quickly and effectively transfer and make use of the technological innovations and breakthroughs that may result from the Institute’s applied research.

The corollary to utility representation on the Governing Board is that the effectiveness and expertise of the Governing Board should not be diluted or hindered by

representation of entities or interests who are outside the electricity and natural gas sector, unless those entities or interests themselves are significant funders of the Institute's programs. This is because, no matter how well intentioned, a Governing Board that loses its focus on the primary mission of the Institute because of other interests or priorities, will not be an effective, high-performing Governing Board in achieving that mission. This is not to exclude the need for independent and public members of the Board, but those members and members from other economic sectors should not dominate or significantly dilute the membership of the Board or its key advisory committees.

B. Technology Transfer: More Detailed Mechanisms and Focus Are Required

The revised proposal reaffirms the intent of the Institute to deliver “public benefits” and benefits to “all of California.” These are laudable and essential goals, which PG&E heartily endorses. However, the University should provide more detail and more specific mechanisms for how it intends technology to be transferred for the *direct* benefit of the utility customers who are funding the Institute. There are a number of mechanisms the Institute can use to ensure rapid and specific transfer of technology for the benefit of utility customers, including free licensing and access to research results and new technology, direct participation in reviewing project proposals, joint review of research results, and allocation of funding for targeted demonstration and pilot projects. The University's specific recommendations on how it would structure the Institute to accomplish these very important technology transfer tasks should be included in its proposal.

C. Public Policymaking: The Institute's Research Program Should Implement Public Policy, Not Make Public Policy

The revised proposal still includes an abundance of references to a role for the Institute in making public policy on climate change issues. As PG&E recommended in its opening comments, public policymaking is *not* a good use of the Institute's scarce resources, or an appropriate function for the Institute. California's energy and environmental policies, particularly those affecting the electricity and natural gas sectors, have been the province of several key governmental institutions for several decades now, including not only the California Legislature, but also policymaking agencies with broad authority such as the Public Utilities Commission, the Energy Commission, the Air Resources Board, and the State Water Board. More recently, with enactment of AB 32, the Governor and the Legislature have delegated policymaking responsibilities on climate change to several agencies and advisory committees, including, *inter alia*, the Air Resources Board, the inter-agency "Climate Action Team," the Economic and Technology Advancement Advisory Committee, the Environmental Justice Advisory Committee, the Governor's Market Advisory Committee, the Western Climate Initiative, as well as the aforementioned CPUC and Energy Commission.

For these reasons, PG&E believes that the University of California's proposal still puts too much emphasis on a policymaking role for the Institute, instead of focusing the Institute on being an *implementer* of R&D that supports the public policies made by these other agencies and advisory committees. In addition, the proposal should provide more detail on how the Institute intends to coordinate with these other public policymaking bodies to ensure that the Institute's programs are indeed consistent with the State's public policy priorities.

D. Ensuring Direct Benefits Flow to Utility Ratepayers: The Institute Can and Should Share and Deliver Commercial and Economic Benefits Directly to Utility Customers

In response to a question from the CPUC regarding whether utility ratepayers should have some right to reimbursement of Institute costs through profits earned by the Institute on ratepayer-funded research, the University of California rejects any requirement for profit-sharing with ratepayers, citing the need to leverage additional funding from Federal or other private sources.

PG&E respectfully believes that this response has the Institute's priorities reversed, raising a question concerning the Institute's fundamental mission and intent. This is all wrong. The Institute's priorities should be to deliver benefits to the ratepayers in the electric and gas sectors that are funding the Institute. These benefits may be direct (in the form of profit-sharing, licensing of new technologies, pilot projects, etc.), or they can be indirect (development of technologies that are targeted at specific climate change problems or impacts faced by utilities on behalf of their customers.) In either case, the focus is on benefits to ratepayers, *not* how to leverage any "profits" to obtain funding from other sources, whether governmental or other private sources.

PG&E recognizes that the leveraging of additional sources of funding can enhance the reach and scope of the Institute's ratepayer-funded research. However, it is not an end in itself, and it should not be at the expense of opportunities to deliver benefits to ratepayers, whether through direct means such as patents, licenses, or royalties, or through indirect means, such as in-kind sharing of the technology and research results at no cost to the utilities. Moreover, PG&E believes that the risk is not that available federal funding will not flow to the Institute, the real risk is that Congress or other governmental agencies will use the ratepayer-funded Institute as a pretext to

reduce federal funding overall.³

For these reasons, PG&E recommends that the Institute be required to share with ratepayers and utilities any patents, royalties, licenses and other commercial value derived from ratepayer-funded research, unless the Institute clearly demonstrates that a key research priority of the Institute cannot be realized without leveraging Institute funding with other sources of funding on a no-string-attached basis. The recent \$500 million agreement between British Petroleum and the University of California for the Energy Biosciences Institute includes royalty and licensing provisions that should be considered for the Institute in this proceeding.⁴

E. Shareholder Funding: Should Be Permitted, Not Required

Although the University of California did not address the issue of shareholder funding, PG&E wants to make clear that shareholder funding or cost-sharing should not be a mandatory condition of establishment of the Institute. However, other parties, such as TURN, suggested that shareholders be required to fund the Institute on a mandated basis.⁵ Mandatory shareholder funding would be ill-advised and unlawful as well.

³ In this regard, PG&E believes that the participation of federal research entities in the Institute, such as the national research laboratories, should be carefully evaluated and structured so that such participation does not result in the substitution of ratepayer funding for those entities research programs in lieu of federal funding.

⁴ “BP Research Partnership Contract is Finally Signed,” *San Francisco Chronicle*, November 15, 2007, page B3. A copy of the BP-University of California contract is available at www.energybiosciencesinstitute.org/images/stories/pressroom/FINAL_Execution_11-9.pdf and is incorporated by reference into these comments. The provisions of the contract relating to governance and intellectual property are contained in Section 2 of the contract and Section 8 of the appendix entitled “Sponsored Research Agreement.”

⁵ TURN Opening Comments, pp. 7- 8; Environmental Defense Opening Comments, at p.3 PG&E notes that TURN alleges that utilities have “profited over the years from the historical practices that now have to be reversed.” (TURN at p.7.). PG&E categorically rejects this allegation; PG&E makes no profit on the costs of power it procures, and the generating plants it owns, including hydroelectric and nuclear plants, are among the lowest emitting in the nation.

PG&E instead recommends that shareholder funding and other grants and assistance from utilities be encouraged and solicited on a voluntary basis.⁶ Such jointly funded projects would provide benefits not only in cost-sharing, but also in the sharing and leveraging of private sector “know-how” and expertise in complex climate change issues affecting the utility industry.

F. R&D Outside the Utility Sector: PG&E Recommends the Institute Limit Its Research Initially to Utility Sector Only and Coordinate the Research with Other Programs to Avoid Duplication and Inconsistency

The revised proposal, especially in describing the “Sustainable Energy Roadmap” process under which the Institute’s strategic priorities will be set, still sets forth a broad multi-sector research agenda, going far beyond R&D on climate change issues affecting the utility sector. As PG&E recommended in its opening comments, the Institute should stick to R&D in the investor-owned utility sector, at least initially, or unless other key sectors (such as publicly-owned utilities or transportation entities) come forward with funding commitments comparable to those made by the customers of investor-owned utilities. In order not to mislead stakeholders on the mission of the Institute, the “Sustainable Energy Roadmap” process should make clear from the very beginning what structural limits the Institute is imposing on its programs in order to provide tangible benefits to the utility customers funding it. Then, if other sources of funding from other sectors of the economy are obtained, the Institute can expand its “Roadmap” to include R&D strategies and priorities which benefit those sectors.

⁶ In addition, under AB 32, various proposals are being considered for allocating to climate change R&D some of the revenues generated by sale of greenhouse gas emissions “allowances.” See, e.g., discussion draft report issued by Air Resources Board’s Economic and Technology Advancement Advisory Board (ETAAC), November 15, 2007, recommending to create a “California Carbon Trust” to fund, *inter alia*, university research and demonstration projects. The Institute’s proposal should be coordinated with these other AB 32-related proposals as well.

In addition, the Institute proposal needs to provide more detail on how duplication and overlap with other climate- and energy-related R&D programs will be avoided, even with the Institute's limited scope. A recently-enacted law, Assembly Bill (AB) 118,⁷ requires development of a coordinated and integrated approach to publicly-funded R&D in California on alternative transportation fuels and technologies. The Institute proposal should avoid duplication and overlap with this integrated State program, and should also consider whether some of the R&D integration and coordination mechanisms in AB 118 should also be applied to the Institute's R&D planning.

Another important consideration in coordinating the Institute's program is to implement the "Adaptation Board" recommended in PG&E's opening comments. The Adaptation Board would have utility representation and serve as a "clearinghouse" for research proposals and technology transfer. The Adaptation Board also would provide a much-needed "feedback loop" and "quality control" process for the applied research undertaken by the Institute.

IV. CONCLUSION

PG&E is gratified with all the hard work and innovative thought that the University of California and other supporting institutions have put into the revised proposal for the Institute. We believe good progress is being made on refining this important and innovative proposal. At the next stage, we believe that public workshops or meetings may be useful and effective in resolving the remaining structural and strategic issues relating to the proposal, and we encourage the Commission and

⁷ Stats 2007, ch 750.

University to hold such workshops. We look forward to continuing to work expeditiously to make the California Institute for Climate Solutions a reality.

Respectfully Submitted,

CHRISTOPHER J. WARNER

By: _____/s/_____
CHRISTOPHER J. WARNER

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6695
Facsimile: (415) 972-5220
E-Mail: CJW5@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: November 19, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON PROPOSED CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS”** on the parties listed in the official service list for R.07-09-008 by

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Executed on November 19, 2007, at San Francisco, California.

/s/
PATRICIA M. JORDAN

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Commissioner Assigned: Michael R. Peevey on September 24, 2007

ALJ Assigned: Carol A. Brown on September 24, 2007

CPUC DOCKET NO. R0709008

Total number of addressees: 113

MRW & ASSOCIATES, INC.
1814 FRANKLIN ST, STE 720
OAKLAND CA 94612
Email: mrw@mrwassoc.com
Status: INFORMATION

MICHAEL ALCANTAR ATTORNEY
ALCANTAR & KAHL LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94114
FOR: Alcantar & Kahl LLP
Email: mpa@a-klaw.com
Status: PARTY

CATHIE ALLEN CA STATE MGR.
PACIFICORP
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
Email: californiadockets@pacificorp.com
Status: INFORMATION

ELIZABETH L. AMBOS ASSISTANT VICE CHANCELLOR
CALIFORNIA STATE UNIVERSITY
401 GOLDEN SHORE
LONG BEACH CA 90802
FOR: California State University
Email: eambos@calstate.edu
Status: PARTY

ELLEN R. AURITI EXEC. DIR., RESEARCH POLICY AND
LEGISLAT
UNIV. OF CALIF. OFFICE OF THE PRESIDENT
1111 FRANKLIN ST
OAKLAND CA 94607
Email: Ellen.Auriti@ucop.edu
Status: INFORMATION

MARCIA W. BECK
LAWRENCE BERKELEY NATIONAL LABORATORY
MS 90-90R3027D
1 CYCLOTRON ROAD
BERKELEY CA 94720
Email: mwbeck@lbl.gov
Status: INFORMATION

DR. MARK ALLEN BERNSTEIN
UNIVERSITY OF SOUTHERN CALIFORNIA
VKC 327 UNIVERSITY PARK CAMPUS
LOS ANGELES CA 90089-0044
Email: mabernst@usc.edu
Status: INFORMATION

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. PO BOX 800
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: Case.Admin@sce.com
Status: PARTY

LYNN ALEXANDER
LMA CONSULTING
129 REDWOOD AVE
CORTE MADERA CA 94925
Email: lynn@lmaconsulting.com
Status: INFORMATION

MEREDITH ALLEN
PACIFIC GAS AND ELECTRIC
PO BOX 770000 MAILCODE B10C
SAN FRANCISCO CA 94177
Email: MEAE@pge.com
Status: INFORMATION

ANN M. ARVIN, MD VICE PROVOST AND DEAN OF
RESEARCH
STANFORD UNIVERSITY
BUILDING 10, MAIN QUADRANGLE
STANFORD CA 94305-0977
FOR: Stanford University
Email: aarvin@stanford.edu
Status: PARTY

KATE BEARDSLEY
PG&E
MAILCODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
Email: KEBD@pge.com
Status: INFORMATION

C. SUSIE BERLIN ATTORNEY
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, STE 501
SAN JOSE CA 95113
Email: sberlin@mccarthyllaw.com
Status: INFORMATION

BIANCA BOWMAN
PACIFIC GAS AND ELECTRIC COMPANY
PG&E MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: BRBC@pge.com
Status: INFORMATION

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Commissioner Assigned: Michael R. Peevey on September 24, 2007

ALJ Assigned: Carol A. Brown on September 24, 2007

CPUC DOCKET NO. R0709008

Total number of addressees: 113

ANDREW BROWN ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95811
Email: abb@eslawfirm.com
Status: INFORMATION

Carol A. Brown
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5103
SAN FRANCISCO CA 94102-3214
Email: cab@cpuc.ca.gov
Status: STATE-SERVICE

MICHAEL E. CAMPBELL INTERIM GENERAL MANAGER
IMPERIAL IRRIGATION DISTRICT
333 EAST BARIONI BLVD
IMPERIAL CA 92251
Email: mcampbell@iid.com
Status: INFORMATION

SHERYL CARTER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: scarter@nrdc.org
Status: INFORMATION

AUDREY CHANG STAFF SCIENTIST
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: achang@nrdc.org
Status: INFORMATION

CLIFF CHEN
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVE, STE 203
BERKELEY CA 94704
Email: cchen@ucsusa.org
Status: INFORMATION

WILLIAM H. CHEN DIRECTOR, ENERGY POLICY WEST
REGION
CONSTELLATION NEW ENERGY, INC.
SPEAR TOWER, 36TH FLOOR
ONE MARKET ST
SAN FRANCISCO CA 94105
Email: bill.chen@constellation.com
Status: INFORMATION

Sachu Constantine
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: sco@cpuc.ca.gov
Status: STATE-SERVICE

BRIAN CRAGG ATTORNEY
GOODIN, MAC BRIDE, SQUERI, RITCHIE & DAY
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: Independent Energy Producers Association
Email: bcragg@goodinmacbride.com
Status: PARTY

SEBASTIAN CSAPO
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
Email: sscb@pge.com
Status: INFORMATION

HALL P. DAILY AVP OF GOVERNMENT AND
COMMUNITY RELAT.
CALIFORNIA INSTITUTE OF TECHNOLOGY
MAIL CODE 2-9
PASADENA CA 91125
Email: hdaily@caltech.edu
Status: INFORMATION

KYLE L. DAVIS
PACIFICORP
825 NE MULTNOMAH ST., STE 2000
PORTLAND OR 97232
Email: kyle.l.davis@pacificorp.com
Status: INFORMATION

AMBER E. DEAN
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: amber.dean@sce.com
Status: PARTY

GEORGE DEHART
CITY OF ANAHEIM
200 SOUTH ANAHEIM BLVD
ANAHEIM CA 92805
Email: gdehart@anaheim.net
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Commissioner Assigned: Michael R. Peevey on September 24, 2007

ALJ Assigned: Carol A. Brown on September 24, 2007

CPUC DOCKET NO. R0709008

Total number of addressees: 113

DANIEL W. DOUGLASS ATTORNEY
DOUGLASS & LIDDELL
21700 OXNARD ST, STE 1030
WOODLAND HILLS CA 91367
FOR: Western Power Trading Forum
Email: douglass@energyattorney.com
Status: PARTY

STEVE ENDO
PASADENA DEPARTMENT OF WATER & POWER
45 EAST GLENARM ST
PASADENA CA 91105
Email: sendo@ci.pasadena.ca.us
Status: INFORMATION

LEAH FLETCHER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST 20TH FLR
SAN FRANCISCO CA 94104
Email: lfletcher@nrdc.org
Status: INFORMATION

CYNTHIA A. FONNER SENIOR COUNSEL
CONSTELLATION ENERGY GROUP INC
550 W. WASHINGTON ST, STE 300
CHICAGO IL 60661
Email: Cynthia.A.Fonner@constellation.com
Status: INFORMATION

LAURA GENAO ATTORNEY
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: laura.genao@sce.com
Status: PARTY

ROBERT GNAIZDA
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2/F
BERKELEY CA 94704
FOR: THE GREENLINING INSTITUTE
Email: robertg@greenlining.org
Status: INFORMATION

THALIA N.C. GONZALEZ ATTORNEY
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE, 2ND FLR
BERKELEY CA 94704
FOR: The Greenlining Institute
Email: thaliag@greenlining.org
Status: PARTY

Janet A. Econome
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5116
SAN FRANCISCO CA 94102-3214
Email: jjj@cpuc.ca.gov
Status: STATE-SERVICE

SUSAN L. FISCHER, PH.D.
AIR RESOURCES BOARD, RESEARCH DIVISION
1001 I ST., PO BOX 2815
SACRAMENTO CA 95812
Email: sfischer@arb.ca.gov
Status: INFORMATION

RYAN L. FLYNN
PACIFICORP
825 NE MULTNOMAH, 18TH FLR
PORTLAND OR 97232
FOR: Pacificorp
Email: Ryan.Flynn@pacificorp.com
Status: PARTY

JEFFREY M. GARBER GENERAL COUNSEL
IMPERIAL IRRIGATION DISTRICT
333 EAST BARIONI BLVD
IMPERIAL CA 92251
Email: jmgarber@iid.com
Status: INFORMATION

DONALD GILLIGAN PRESIDENT
NATIONAL ASSOCIATION OF ENERGY SERVICE
610 MOUNTAIN ST
SHARON MA 2067
FOR: NAESCO
Email: donaldgilligan@comcast.net
Status: PARTY

HOWARD GOLLAY
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison
Email: howard.gollay@sce.com
Status: PARTY

YVONNE GROSS REGULATORY POLICY MANAGER
SEMPRA ENERGY
HQ08C
101 ASH ST
SAN DIEGO CA 92103
Email: ygross@sempraglobal.com
Status: INFORMATION

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Total number of addressees: 113

SUSAN HACKWOOD EXECUTIVE DIRECTOR
CALIFORNIA COUNCIL ON SCIENCE AND TECH
5005 LA MART DRIVE, STE 105
RIVERSIDE CA 92507
FOR: California Council on Science and Technology
Email: hackwood@ccst.us
Status: PARTY

PETER W. HANSCHEN ATTORNEY
MORRISON & FOERSTER LLP
101 YGNACIO VALLEY ROAD, STE 450
WALNUT CREEK CA 94596
FOR: Morrison & Foerster LLP
Email: phansch@mofo.com
Status: PARTY

JEFFREY D. HARRIS ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95814
Email: jdh@eslawfirm.com
Status: INFORMATION

LYNN M. HAUG ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95814-3512
Email: lmh@eslawfirm.com
Status: INFORMATION

GARY HINNERS
RELIANT ENERGY, INC.
PO BOX 148
HOUSTON TX 77001-0148
Email: ghinners@reliant.com
Status: INFORMATION

LARRY HORTON SENIOR V.P. FOR PUBLIC AFFAIRS
STANFORD UNIVERSITY
BUILDING 170, FIRST FLR
STANFORD CA 94305-2040
FOR: Stanford University
Email: lhorton@stanford.edu
Status: PARTY

BRUNO JEIDER
BURBANK WATER & POWER
164 WEST MAGNOLIA BLVD.
BURBANK CA 91502
Email: bjeider@ci.burbank.ca.us
Status: INFORMATION

DR. RANDOLPH W. HALL
UNIVERSITY OF SOUTHERN CALIFORNIA
300 BOVARD UNIVERSITY PARK CAMPUS
LOS ANGELES CA 90089-4019
FOR: University of Southern California
Email: rwhall@usc.edu
Status: PARTY

ANDREW L. HARRIS
PACIFIC GAS & ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO CA 94177
Email: alho@pge.com
Status: INFORMATION

AUDRA HARTMANN
DYNEGY INC.
980 NINTH ST, STE 1420
SACRAMENTO CA 95814
FOR: Dynegy, Inc.
Email: Audra.Hartmann@Dynergy.com
Status: PARTY

CHRISTOPHER HILEN ASSISTANT GENERAL COUNSEL
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89511
FOR: Sierra Pacific Power Company
Email: chilen@sppc.com
Status: PARTY

GARY A. HINNERS
RELIANT ENERGY
1000 MAIN ST
HOUSTON TX 77002
Email: ghinners@reliant.com
Status: INFORMATION

TAM HUNT ENERGY PROGRAM DIRECTOR/ATTORNEY
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU
SANTA BARBARA CA 93101
FOR: Community Environmental Council
Email: thunt@cecmail.org
Status: PARTY

CHANGUS JONATHAN LEGISLATIVE DIRECTOR
OFFICE OF ASSEMBLY MEMBER BLAKESLEE
STATE CAPITOL, RM 4117
SACRAMENTO CA 95814
Email: jonathan.changus@asm.ca.gov
Status: INFORMATION

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EVELYN KAHL ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
FOR: Alcantar & Kahl LLP
Email: ek@a-klaw.com
Status: PARTY

DOUGLAS K. KERNER ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95814
Email: dkk@eslawfirm.com
Status: INFORMATION

DEAN A. KINPORTS
SAN DIEGO GAS AND ELECTRIC
555 W. 5TH ST, GT14D6
LOS ANGELES CA 90013
Email: dakinports@semprautilities.com
Status: INFORMATION

LEILANI JOHNSON KOWAL
LOS ANGELES DEPT. OF WATER & POWER
111 NORTH HOPE ST, STE 1536
LOS ANGELES CA 90012
Email: Leilani.johnson@ladwp.com
Status: INFORMATION

CLARE LAUFENBERG
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST, MS 46
SACRAMENTO CA 95814
Email: claufenb@energy.state.ca.us
Status: STATE-SERVICE

DON LIDDELL ATTORNEY
DOUGLASS & LIDDELL
2928 2ND AVE
SAN DIEGO CA 92103
Email: liddell@energyattorney.com
Status: INFORMATION

STEVEN G. LINS GENERAL COUNSEL
GLENDALE WATER AND POWER
613 EAST BROADWAY, STE 220
GLENDALE CA 91206-4394
Email: slins@ci.glendale.ca.us
Status: INFORMATION

SAMUEL S. KANG LEGAL COUNSEL
1918 UNIVERSITY AVE. 2ND FLR
BERKELEY CA 94704
FOR: The Greenlining Institute
Email: samuelk@greenlining.org
Status: PARTY

KIM KIENER
504 CATALINA BLVD
SAN DIEGO CA 92106
Email: kmkiener@cox.net
Status: INFORMATION

ERIC KLINKNER
PASADENA DEPARTMENT OF WATER AND POWER
150 LOS ROBLES AVE, STE 200
PASADENA CA 91101-2437
Email: eklinkner@ci.pasadena.ca.us
Status: INFORMATION

ANNE W. KUYKENDALL
FOLGER LEVIN & KAHN LLP
EMBARCADERO CENTER WEST
275 BATTERY ST, 23RD FLR
SAN FRANCISCO CA 94111
Email: AWK@flk.com
Status: INFORMATION

LLOYD C. LEE ATTORNEY
UNIVERSITY OF CALIFORNIA GENERAL COUNSEL
1111 FRANKLIN ST 8TH FLR
OAKLAND CA 94607
FOR: The Regents of the University of California
Email: lloyd.lee@ucop.edu
Status: PARTY

RONALD LIEBERT ATTORNEY
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
FOR: California Farm Bureau Federation
Email: rliebert@cbbf.com
Status: PARTY

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND CA 94609
Email: jody_london_consulting@earthlink.net
Status: INFORMATION

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ED LUCHA CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177
Email: ELL5@pge.com
Status: INFORMATION

SUSAN H. MAC CORMAC
MORRISON & FOERSTER LLP
425 MARKET ST
SAN FRANCISCO CA 94105
Email: smaccormac@mofo.com
Status: INFORMATION

MARTIN A. MATTES ATTORNEY
NOSSAMAN GUTHNER KNOX & ELLIOTT, LLP
50 CALIFORNIA ST, 34TH FLR
SAN FRANCISCO CA 94111-4799
Email: mmattes@nossaman.com
Status: INFORMATION

BRUCE MCLAUGHLIN
BRAUN & BLAISING, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
Email: mclaughlin@braunlegal.com
Status: INFORMATION

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89520
Email: emello@sppc.com
Status: INFORMATION

IRENE K. MOOSEN ATTORNEY
53 SANTA YNEZ AVE
SAN FRANCISCO CA 94112
FOR: Regents of the University of California
Email: irene@igc.org
Status: PARTY

Scott Murtishaw
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: sgm@cpuc.ca.gov
Status: STATE-SERVICE

JANE E. LUCKHARDT ATTORNEY
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLR
SACRAMENTO CA 95814
Email: jluckhardt@downeybrand.com
Status: INFORMATION

Jaclyn Marks
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5306
SAN FRANCISCO CA 94102-3214
Email: jm3@cpuc.ca.gov
Status: STATE-SERVICE

STEVE MCCOY-THOMPSON
NEXANT INC
101 SECOND ST. 10TH FLR
SAN FRANCISCO CA 94105
Email: smthomps@nexant.com
Status: INFORMATION

BRIAN MCQUOWN
RELIANT ENERGY
7251 AMIGO ST., STE 120
LAS VEGAS NV 89119
Email: bmcquown@reliant.com
Status: INFORMATION

Beth Moore
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
505 VAN NESS AVE RM 4103
SAN FRANCISCO CA 94102-3214
Email: blm@cpuc.ca.gov
Status: STATE-SERVICE

RICHARD J. MORILLO
PO BOX 6459
BURBANK CA 91510-6459
Email: rmorillo@ci.burbank.ca.us
Status: INFORMATION

DESPINA NIEHAUS
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32H
SAN DIEGO CA 92123-1530
FOR: SAN DIEGO GAS AND ELECTRIC COMPANY
Email: dnierhaus@semprautilities.com
Status: INFORMATION

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Total number of addressees: 113

KAREN NOTSUND ASSISTANT DIRECTOR
UC ENERGY INSTITUTE
2547 CHANNING WAY 5180
BERKELEY CA 94720-5180
Email: knotsund@berkeley.edu
Status: INFORMATION

Marion Peleo
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4107
SAN FRANCISCO CA 94102-3214
Email: map@cpuc.ca.gov
Status: STATE-SERVICE

RASHA PRINCE
SAN DIEGO GAS & ELECTRIC
555 WEST 5TH ST, GT14D6
LOS ANGELES CA 90013
Email: rprince@semprautilities.com
Status: INFORMATION

JESSE W. RASKIN LEGAL ASSOCIATE
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE, 2ND FLR
BERKELEY CA 94704
FOR: THE GREENLINING INSTITUTE
Email: jesser@greenlining.org
Status: INFORMATION

PROF. DAVID RUTLEDGE DIVISION CHAIR,
ENGINEERING AND APP. SCI
CALIFORNIA INSTITUTE OF TECHNOLOGY
102 THOMAS, 104-44
PASADENA CA 91125
FOR: California Institute of Technology
Email: dave.rutledge@caltech.edu
Status: PARTY

STEVEN SCIORTINO
CITY OF ANAHEIM
200 SOUTH ANAHEIM BLVD
ANAHEIM CA 92805
Email: ssciortino@anaheim.net
Status: INFORMATION

ALANA STEELE ATTORNEY
HANNA AND MORTON, LLP
444 SOUTH FLOWER ST, STE 1500
LOS ANGELES CA 90071-2916
Email: asteele@hanmor.com
Status: INFORMATION

NORMAN A. PEDERSEN ATTORNEY
HANNA AND MORTON LLP
444 SOUTH FLOWER ST. STE 1500
LOS ANGELES CA 90071-2916
FOR: Southern California Generation Coalition
Email: npedersen@hanmor.com
Status: PARTY

ROBERT L. PETTINATO
LOS ANGELES DEPARTMENT OF WATER & POWER
111 NORTH HOPE ST, STE 1151
LOS ANGELES CA 90012
Email: robert.pettinato@ladwp.com
Status: INFORMATION

EDWARD RANDOLPH ASM LEVINE'S OFFICE
ASSEMBLY COMMITTEE/UTILITIES AND COMMERC
STATE CAPITOL RM 5135
SACRAMENTO CA 95814
Email: edward.randolph@asm.ca.gov
Status: INFORMATION

CATHY REHEIS-BOYD CHIEF OPERATING OFFICER
WESTERN STATES PETROLEUM ASSOCIATION
1415 L ST, STE 600
SACRAMENTO CA 95814
Email: creheis@wspea.org
Status: INFORMATION

JANINE L. SCANCARELLI ATTORNEY
FOLGER, LEVIN & KAHN, LLP
275 BATTERY ST, 23RD FLR
SAN FRANCISCO CA 94111
Email: jscancarelli@flk.com
Status: INFORMATION

NORA SHERIFF ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
Email: nes@a-klaw.com
Status: INFORMATION

JAMES L. SWEENEY DIR. PRECOURT INST. FOR
ENERGY EFFICIENCY
STANFORD UNIVERSITY
TERMAN ENGINEERING CENTER, ROOM 459
380 PANAMA MALL
STANFORD CA 94305
FOR: Stanford University
Email: Jim.sweeney@stanford.edu
Status: PARTY

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Total number of addressees: 113

Christine S. Tam
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: tam@cpuc.ca.gov
Status: STATE-SERVICE

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
Email: filings@a-klaw.com
Status: INFORMATION

EDWARD VINE
LAWRENCE BERKELEY NATIONAL LABORATORY
BUILDING 90R4000
BERKELEY CA 94720
FOR: Lawrence Berkeley National Laboratory
Email: elvine@lbl.gov
Status: PARTY

CHRISTOPHER WARNER ESQ.
PACIFIC GAS AND ELECTRIC COMPANY
LAW DEPARTMENT
B30A, PO BOX 770000
SAN FRANCISCO CA 94177
FOR: Pacific Gas and Electric
Email: cjw5@pge.com
Status: PARTY

VIRGIL WELCH STAFF ATTORNEY
ENVIRONMENTAL DEFENSE
1107 9TH ST, STE 540
SACRAMENTO CA 95814
FOR: Environmental Defense
Email: vwelch@environmentaldefense.org
Status: PARTY

WILLIAM W. WESTERFIELD III
ELLISON SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95814
Email: www@eslawfirm.com
Status: INFORMATION

VALERIE WINN PROJECT MANAGER
PACIFIC GAS & ELECTRIC
77 BEALE ST, B9A
SAN FRANCISCO CA 94105
Email: vjw3@pge.com
Status: INFORMATION

FRANK TENG ENVIRONMENT AND ENERGY
ASSOCIATE
SILICON VALLEY LEADERSHIP GROUP
224 AIRPORT PARKWAY, STE 620
SAN JOSE CA 95110
FOR: Silicon Valley Leadership Group
Email: fteng@svlg.net
Status: PARTY

VERONICA VILLALOBOS
UNIVERSITY OF SOUTHERN CALIFORNIA
1800 I ST
SACRAMENTO CA 95814
Email: Vvillalo@usc.edu
Status: INFORMATION

DEVRA WANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
FOR: Natural Resources Defense Council
Email: dwang@nrdc.org
Status: PARTY

JAMES WEIL DIRECTOR
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL CA 95614
Email: jweil@aglet.org
Status: INFORMATION

ELIZABETH WESTBY ATTORNEY
ALCANTAR & KAHL, LLP
1300 SW FIFTH AVE., STE 1750
PORTLAND OR 97201
Email: egw@a-klaw.com
Status: INFORMATION

JOSEPH F. WIEDMAN ATTORNEY
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
Email: jwiedman@goodinmacbride.com
Status: INFORMATION

ALEXIS K. WODTKE STAFF ATTORNEY
CONSUMER FEDERATION OF CALIFORNIA
520 S. EL CAMINO REAL, STE. 340
SAN MATEO CA 94402
FOR: Consumer Federation of California
Email: lex@consumercal.org
Status: PARTY

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Total number of addressees: 113

REN ZHANG

PASADENA DEPARTMENT OF WATER & POWER

45 EAST GLENARM ST

PASADENA CA 91105

Email: rzhang@cityofpasadena.net

Status: INFORMATION